REMARKS

This Response is with reference to the Final Office Action dated November 6, 2007 ("FOA"). In the Final Office Action, claims 30-38 were rejected under 35 USC §103. Claims 30-38 are believed allowable, with claim 30 being an independent claim.

In response, the applicants respectfully submit:

1. the finality of the Office Action is improper;
2. the Barnes reference does not disclose a threat level within an activation token; and
3. the §103 rejections are conclusory.

1. THE FINALITY OF THE OFFICE ACTION IS IMPROPER:

The present Final Office Action introduces a new ground of rejection that was neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement.

"Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)." MPEP 706.07(a) (emphasis added).

A non-final Office Action was issued on February 15, 2006, rejecting claims 30-38 under 35 USC §103 as allegedly unpatentable over U.S. Patent No. 6,834,350 ("Boroughs") in view of Riordan and Dominique Alessandri, "Target Naming and Service Apoptosis", ISSN 0302-9743 (October 27, 2000) ("Riordan"). It is noted the publication date was provided by the Examiner in Form PTO-892 attached to the Office Action:

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	Riordan, James et al., "Target Naming and Service Apoptosis," Lecture Notes in Computer Science, 27 Oct 2000, pp. 217-225

In response, the Applicants argued Riordan was not available as prior art due to its publication date and that claim 30 was therefore allowable. Claim 30 was not amended in the response. Furthermore, no information disclosure statements were submitted after the non-final Office Action mailed on February 15, 2006.

The Final Office Action dated November 6, 2007 rejected claims 30-38 as allegedly unpatentable over Boroughs in view of a Barnes & Noble.com printout for Recent Advances in Intrusion Detection <http://search.barnesandnoble.com/booksearch/isbnInquiry.asp?z=y&EAN=9783540410850&itm=1> ("Barnes").

The rejection of claims 30-38 over Boroughs in view of Barnes under 35 U.S.C. §103 in the Final Office Action was neither necessitated by the Applicants' amendment of the claims nor based on information submitted in an information disclosure statement. The combination of Boroughs in view of Barnes materially changes the substance of the rejection by introducing a new reference and arguing Riordan was not published on October 27, 2000 as stated in the February 15, 2006 Office Action, but rather on January 2000.

Moreover, the rejection in the Final Office Action denies the Applicants an opportunity to fully respond to the new rejection of claims 30-38 over Boroughs in view of Barnes under 35 U.S.C. §103. Upholding the finality of the Final Office Action penalizes the Applicants for relying on the accuracy of the February 15, 2006 Office Action.

For the reasons set forth above, the Applicants respectfully submit that the Final Rejection of November 6, 2007 is premature and the finality of this action should be withdrawn.

2. THE BARNES REFERENCE DOES NOT DISCLOSE A THREAT LEVEL WITHIN AN ACTIVATION TOKEN

In rejecting claims 30-38, the Examiner argues that while Borough fails to disclose including a threat level within the activation token, such teaching can be found in a book referenced by Barnes. However, the Office Action does not provide the Applicants with a copy of the actual book text. See MPEP 707.05(a).

Barnes is webpage a referencing a book for sale. Barnes does not contain any teaching related to the present application.

The Examiner argues Barnes cites a book that contains the Riordan reference. FOA, page 5. The Applicants note, however, the Riordan reference of record did not originate from the book cited in Barnes. The book cover shown in Barnes is different than the book cover in the Riordan reference. Furthermore, the book volume referenced in Barnes is 190, whereas Riordan states its volume is 1907/2000. Barnes makes no mention of the authors in Riordan. Thus, the Examiner's reliance of Barnes to establish a publication date for Riordan is improper.

3. THE §103 REJECTIONS ARE CONCLUSORY

The rejection of claim 30 amounts to a conclusory statement unsupported by articulated reasoning or rational underpinning.

It is well settled that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336, quoted with approval in KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007).

"It is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply." MPEP 706.02(j). "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." MPEP 706.02(j) citing Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

In rejecting claim 30, the office action alleges Boroughs discloses all the claim elements except including a threat level within the activation token. FOA, pg. 2-3. The Examiner argues these claim elements are found in Boroughs by merely copying the claim elements and citing Boroughs column and line numbers in parentheses. The rejection does not provide a comprehensive

explanation of why the examiner considers the limitations of claim 30 disclosed in Boroughs. The applicants are left guessing what the examiner was thinking when making the rejection.

For example, claim 30 recites, in part, "an activation token identifying system characteristics and specifying a threat level and at least one preset activation measure, wherein a system characteristic is one of the group of a hardware system, a service, a configuration of a service, a service execution platform, and a service version." The Final Office Action cites column 2, line 62 through column 3, line 34 of Boroughs as allegedly disclosing this claim limitation.

The cited text of Boroughs states,

> For example, the distribution could contain information describing a newly-discovered form of network attack, and explain how network security equipment or software already being used by the subscriber protects the subscriber from such attacks. A distribution may also contain software. Such software can include both software designed to execute once to ensure that the subscriber's network is protected from a certain type of attack, or new or updated network security software that executes continuously to ensure the security of the subscriber's network. A distribution may also contain data used for network security purposes. For example, where a subscriber uses a particular network security device that operates based upon a set of security rules, a distribution to the subscriber may contain additional rules to be added to the set used by the network security device.
>
> Because some distributions are only useful to subscribers having certain security characteristics, such as those having a particular network security device, the facility preferably selects addressees for each distribution from the subscribers registered with the network security information service. In this regard, the facility preferably uses a subscriber information database that stores information about each subscriber registered with the network security information service. For example, the subscriber database may contain, for each subscriber, an indication of the types of network security equipment, network security software, and applications used by the subscriber. When the facility receives a new distribution, it preferably receives with it an addressing query designed to select addressees for the distribution. The facility performs the addressing query against the subscriber information database to select addressees of the distribution. By selecting addressees for a distribution (or "addressing" the distribution), the facility maximizes the extent to which each registered subscriber receives the distributions that relate to it, and minimizes the extent to which each registered subscriber receives distributions that do not relate to it. Also, by directly controlling the set of addressees, the facility ensures that distributions are not delivered to parties other than subscribers.

The cited text discusses distributions prepared by a team of network security experts. The text makes no mention or suggestion of an activation token indentifying system characteristics. The Examiner does not explain, nor is it apparent, how the cited text is equivalent to the claim element. Furthermore, there is no discussion in the citation of identifying at least one preset activation measure.

Claim 30 further recites, "a first system configured to at least review security and vulnerability information from information publishers and to provide the activation token based on the security and vulnerability information." The Final Office Action cites column 2, line 59 through column 3, line 10 of Boroughs as allegedly disclosing this claim limitation.

The cited text of Boroughs states,

> Distributions are preferably prepared by a team of network security experts. A distribution may contain information, such as textual information, for review by a network security administrator. For example, the distribution could contain information describing a newly-discovered form of network attack, and explain how network security equipment or software already being used by the subscriber protects the subscriber from such attacks. A distribution may also contain software. Such software can include both software designed to execute once to ensure that the subscriber's network is protected from a certain type of attack, or new or updated network security software that executes continuously to ensure the security of the subscriber's network. A distribution may also contain data used for network security purposes. For example, where a subscriber uses a particular network security device that operates based upon a set of security rules, a distribution to the subscriber may contain additional rules to be added to the set used by the network security device.

There is discussion in the cited paragraph of a system configured to at least review security and vulnerability information from information publishers and to provide the activation token based on the security and vulnerability information. Again, the Examiner has not presented a convincing line of reasoning as to why an artisan would have found the claimed invention to have been obvious in light of the teachings of Boroughs.

Similarly, the claim element of "a second system configured to determine whether the activation token is relevant by checking if actual characteristics at the second system correspond to the system characteristics identified by the activation token, the second system further configured to

transform the activation token into at least one activation measure if the activation token is considered relevant by the second system, the activation measure configured to modify services executing at the second system" is not found in the citation offered by the Examiner. No articulated reasoning is provided in the Office Action why the cited passage of Boroughs is believed to disclose this claim element.

CONCLUSION

In view of the forgoing remarks, it is respectfully submitted that this case is now in condition for allowance and such action is respectfully requested. If any points remain at issue that the Examiner feels could best be resolved by a telephone interview, the Examiner is urged to contact the attorney below.

No fee is believed due with this Amendment, however, should such a fee be required please charge Deposit Account 50-0510 the required fee. Should any extensions of time be required, please consider this a petition thereof and charge Deposit Account 50-0510 the required fee.

Respectfully submitted,

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